

Commonwealth of Massachusetts
PLYMOUTH SUPERIOR COURT
Case Summary
Civil Docket

06/02/2005
12:08 PM

PLCV2005-00287

Heavern, ppa; by her parents & next friends Denise & Paul Heaven et al v Marriott International, Inc. et

File Date	03/11/2005	Status	Disposed: transferred to other court (dtrans)
Status Date	06/02/2005	Session	B - Civil B - CtRm 1 (Plymouth)
Origin	1	Case Type	B04 - Other negligence/pers injury/pro
Lead Case		Track	F

Service	06/09/2005	Answer	08/08/2005	Rule 12/19/20	08/08/2005
Rule 15	08/08/2005	Discovery	01/05/2006	Rule 56	02/04/2006
Final PTC	03/06/2006	Disposition	05/05/2006	Jury Trial	Yes

PARTIES

Plaintiff

Julia Heavern, ppa; by her parents & next friends
Denise & Paul Heaven
Active 03/11/2005

Plaintiff

Nicole Heavern, ppa by her parents & next friends
Denise & Paul Heaven
Active 03/11/2005

Plaintiff

Kerin Mitchell, ppa by her parents & next friends
Ellen & Jim Mitchell
Active 03/11/2005

Plaintiff

Taylor Vieira, ppa by her parents & next friends
Kathy & Steve Vieira
Active 03/11/2005

Private Counsel 629240

Garrett J Bradley
Thornton & Naumes
100 Summer Street
30th floor
Boston, MA 02110
Phone: 617-720-1333
Fax: 617-720-2445
Active 03/11/2005 Notify

PLCV2005-00287

Heaven, ppa; by her parents & next friends Denise & Paul Heaven et al v Marriott International, Inc. et

Plaintiff

Brian Vieira, ppa by his parents next friends Kathy
& Steve Vieira
Active 03/11/2005

Defendant

Marriott International, Inc.
Served: 04/04/2005
Answered: 05/31/2005
Answered 05/31/2005

Defendant

Zurich North America
Served: 05/12/2005
Answered: 05/31/2005
Answered 05/31/2005

Private Counsel 634025

Keith L Sachs
Melick Porter & Shea LLP
28 State Street
22nd floor
Boston, MA 02109-1775
Phone: 617-523-6200
Fax: 617-523-8130
Active 06/01/2005 Notify

Private Counsel 231840

Peter G Hermes
Hermes Netburn O'Connor & Sommerville
111 Devonshire Street
8th floor
Boston, MA 02109-5407
Phone: 617-728-0050
Fax: 617-728-0052
Active 05/26/2005 Notify

Private Counsel 642367

Gina A Fonte
Hermes Netburn O'Connor & Sommerville
111 Devonshire Street
8th floor
Boston, MA 02110-5407
Phone: 617-728-0050
Fax: 617-728-0052
Active 05/26/2005 Notify

ENTRIES

Date	Paper	Text
03/11/2005	1.0	Complaint & civil action cover sheet filed
03/11/2005		Origin 1, Type B04, Track F.
04/19/2005	2.0	SERVICE RETURNED: Marriott International, Inc.(Defendant) in hand to Bernardo Montanez agent/person in charge
05/19/2005	3.0	Atty Peter G. Hermes and Gina A. Fonte's notice of appearance for Zurich North America
05/24/2005	4.0	SERVICE RETURNED: Zurich North America(Defendant)
05/31/2005	5.0	ANSWER: Zurich North America(Defendant)
05/31/2005	6.0	ANSWER & Jury Claim: Marriott International, Inc.(Defendant)
06/02/2005	7.0	Copy of Petition for Removal to the United States District Court filed by Zurich North America
06/02/2005	8.0	Case REMOVED this date to US District Court of Massachusetts

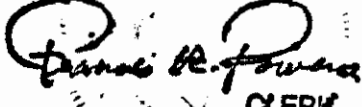
Commonwealth of Massachusetts
PLYMOUTH SUPERIOR COURT
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PLCV2005-00287

Heaven, ppa; by her parents & next friends Denise & Paul Heaven et al v Marriott International, Inc. et

EVENTS

A TRUE COPY ATTEST

CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JULIA HEAVERN, et al.

Plaintiffs,

v.

MARRIOTT INTERNATIONAL, INC.
and ZURICH NORTH AMERICA,

Defendants.

CIVIL ACTION NO. _____

NOTICE OF REMOVAL

TO: The Honorable Chief and Judges
of the United States District Court
District of Massachusetts

PLEASE TAKE NOTICE THAT the defendant Zurich North America (“Defendant” or “Zurich”)¹ hereby files this Notice of Removal of Civil Action No. PLCV 2005-00287-B which is filed in the Superior Court of the Commonwealth of Massachusetts, Plymouth County (the “State Court Action”) to the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. §1441 and §1446, as amended and, in accordance with 28 U.S.C. §1332 on the following grounds:

1. On or about March 11, 2005, the Plaintiffs, Julia Heavern by her parents and next friends, Denise and Paul Heavern, Nicole Heavern, by her parents and next friends, Denise and Paul Heavern, Kerin Mitchell, by her parents and next friends, Ellen and Jim Mitchell, Taylor Vieira, by her parents and next friend, Kathy and Steve Vieira, and Brian Vieira, by his parents and next friends, Kathy and Steve Vieira (collectively referred to as the “Plaintiffs”) commenced

¹ The Plaintiff has misnamed the Defendant in its Complaint. The Defendant’s proper name is “Zurich American Insurance Company.”

this lawsuit against the defendants, Marriott International, Inc. (“the Marriott”) and Zurich in the Superior Court, Commonwealth of Massachusetts, Plymouth County, Civil Action No. PLCV 2005-00287-B (“State Court Action”).

2. In the State Court Action, the Plaintiffs asserted claims for negligence against the Marriot with respect to injuries allegedly sustained by the Plaintiffs.

3. In the State Court Action, the Plaintiffs also asserted a claim against Zurich under M.G.L. c.93A and M.G.L. c. 176D, Section 3(9)(f).

4 The Plaintiffs served Zurich with a copy of the Summons, Complaint and Civil Action cover sheet in the State Court Action on or about May 12, 2005. In accordance with 28 U.S.C. §1446(b), this Notice of Removal is being filed within thirty (30) days of receipt by Zurich of the initial pleadings.

5. Pursuant to 28 U.S.C. §1332, the United States District Court for the District of Massachusetts has original jurisdiction over this matter because:

a. the amount in controversy exceeds \$75,000 because the Plaintiffs allege they have sustained damages of at least \$130,000; and

b. there is complete diversity of citizenship because the Plaintiffs are residents of Massachusetts (Complaint ¶¶1-5); the Marriott is a Delaware corporation with a principal place of business in Maryland; and Zurich is a New York corporation with a principal place of business in Maryland.

6. Pursuant to 28 U.S.C. §1446(d), the Plaintiffs, through their counsel, are being provided with written notice of the filing of this Notice of Removal as evidenced by the attached certificate of service.

7. Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of Removal will be filed today with the Clerk of the Superior Court, Plymouth County.

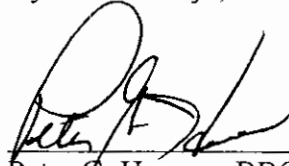
8. Pursuant to 28 U.S.C. §1446(a), copies of all process, pleadings and orders served upon the Defendant, Zurich are attached hereto, as Exhibit A.

9. Pursuant to Loc. R. 81.1, Zurich will file, within thirty (30) days after filing this Notice of Removal, certified or attested copies of all records and proceedings in the State Court Action and certified or attested copy of all docket entries in the State Court Action.

WHEREFORE, defendant, Zurich North America, respectfully requests that this Court:

1. remove from the Superior Court of the Commonwealth of Massachusetts, Plymouth County, Civil Action No. PLCV 2005-00287-B, to the United States District Court for the District of Massachusetts; and
2. grant such other and further relief as this Court deems proper and appropriate.

ZURICH AMERICAN INSURANCE COMPANY,
By its Attorneys,




Peter G. Hermes, BBO. No. 231840
Gina A. Fonte, BBO No. 642367
HERMES, NETBURN, O'CONNOR &
SPEARING, P.C.
111 Devonshire Street, 8th Floor
Boston, MA 02110
(617) 728-0050
(617) 728-0052 (Fax)

CERTIFICATE OF SERVICE

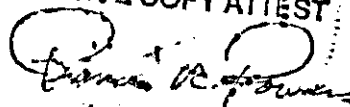
I hereby certify that on this 1st day of June, 2005, I served on counsel of record the above notice by mailing a copy thereof, postage prepaid, to:

Garrett Bradley, Esquire
THORNTON & NAUMES, LLP
1000 Summer Street, 30th Floor
Boston, MA 02110

Anthony Campo, Esq.
Boyle, Morrissey & Campo
25 Stuart Street
Boston, MA 02116


Gina A. Fonte

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ATRUE COPY ATTEST

CLERK

A

PLYMOUTH, ss.

Julia Heaven, by her parents and next
Friends, Denise and Paul Heaven,
Nicole Heaven, by her parents and
Next friend Denise and Paul Heaven,
Karin Mitchell, by her parents and
Next friends, Ellen and Jim Mitchell,
Taylor Vieira, by her parents and
Next friend, Kathy and Steve Vieira,
And Brian Vieira, by his parents and
Next friends, Kathy and Steve Vieira

SUPERIOR COURT DEPARTMENT OF THE
TRIAL COURT OF THE COMMONWEALTH
CIVIL ACTION
NO. PLCV 2005 - 00287-B

Plaintiff(s)

SERVED ON
MAY 12 2005

RECEIVED
MAY 12 2005
H.O. Claims/Leads

Marriott International, Inc., and
Zurich North America,

Defendant(s)

K. Gruehl 10:45am

SUMMONS

To the above-named defendant : Person In Charge of Business for Zurich North America,
1400 American Lane, Schaumburg, Cook County, Illinois. Garrett J. Bradley, Esquire
You are hereby summoned and required to serve upon
plaintiff attorney, whose address is 100 Summer St., 30th Flr., Boston, MA 02110
complaint which is herewith served upon you, within 20 days after service of this summons upon you,
exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for
the relief demanded in the complaint. You are also required to file your answer to the complaint in the
office of the Clerk of this court at Brockton either before service upon plaintiff attorney or within a
reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which
you may have against the plaintiff which arises out of the transaction or occurrence that is the subject
matter of the plaintiff claim or you will thereafter be barred from making such claim in any other action.

Witness Barbara J. Rouse Esquire, at Plymouth, the 5th day of
May in the year of our Lord one thousand nine hundred and 2005

Francis R. Powers
CLERK.

NOTES

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. To plaintiff's attorney: please circle type of action involved - Tort - Motor Vehicle Tort - Contract - Equitable Relief - Other.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on , 19 , I served a copy
of the within summons, together with a copy of the complaint in this action, upon the within-named
defendant , in the following manner (See Mass. R. Civ. P. 4 (d) (1-5):

Dated: , 19

N.B. TO PROCESS SERVER:-

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON
THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.

, 19

NOTICE TO DEFENDANT:- You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's Office at Brockton.

**CIVIL ACTION
COVER SHEET**

DOCKET NO.(S)

**Trial Court of Massachusetts
Superior Court Department**
County: Plymouth



PLAINTIFF(S)
Julia Heavern, et al.

DEFENDANT(S)
Marriott International, Inc., et al.

ATTORNEY, FIRM, ADDRESS AND TELEPHONE (517) 720-1533
Allyson S. Hauck, Esquire
Garret J. Bradley, Esquire
THORNTON & NAUMES, LLP
100 Summer St., 30th FL, Boston, MA 02110
Board of Bar Overseers number: 659547 and 629240

ATTORNEY (if known)

Origin code and track designation

Place and x in one box only:

- ☒ 1.F01 Original Complaint
☐ 2.F02 Removal to Sup.Ct. C.231, s.104
(Before trial) (F)
☒ 3.F03 Retransfer to Sup.Ct.C.231,s.102C(X)

- ☐ 4.F04 District Court Appeal c.231,s.97 & 104
(After trial) (X)
☐ 5.F05 Reactivated after rescript; relief
from judgment/Order (Mass.R.Civ.P.60) (X)
☒ 6.E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See Reverse Side)

CODE NO. TYPE OF ACTION (specify) TRACK IS THIS A JURY CASE?

Boy Personal Injury (F) (X) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

A. Documented medical expenses to date:

- | | |
|------------------------------------|-----------------------------|
| 1. Total hospital expenses | \$ 5,000.00 |
| 2. Total Doctor expenses | \$ 700.00 |
| 3. Total chiropractic expenses | \$ |
| 4. Total physical therapy expenses | \$ |
| 5. Total other expenses (describe) | \$ |
| | Subtotal \$ 5,700.00 |

B. Documented lost wages and compensation to date

..... \$

C. Documented property damages to date

..... \$

D. Reasonably anticipated future medical and hospital expenses

..... \$ 125,000.00

E. Reasonably anticipated lost wages

..... \$

F. Other documented items of damages (describe)

..... \$

G. Brief description of plaintiff's injury, including nature and source of injury (date, age): Two minor plaintiffs were exposed to dangerous levels of chemicals at Defendant's hotel pool. All experienced severe (fever) burns, trouble breathing and skin rashes. Some of the children had experienced severe eye irritation. One of the children had excoriation of extremities for 1 to 2 months following the exposure. Another child was put on an inhalant to soothe their inhaler in date. Another child developed mild Reactive Airway Disease. As a result of the exposure, all children experienced some level of emotional trauma.

TOTAL \$ 130,000.00

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

[Handwritten Signature]

DATE: March 10 2005

, Esq.

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT

C.A. NO.:

PK CV 2005-00287-B

Julia Heavern, by her parents
and next friends, Denise and Paul
Heavern, Nicole Heavern, by her
parents and next friends, Denise
and Paul Heavern, Kerin Mitchell,
by her parents and
next friends, Ellen and Jim Mitchell,
Taylor Vieira, by her parents and
next friend, Kathy and Steve Vieira,
and Brian Vieira, by his parents
and next friends, Kathy and
Steve Vieira,

Plaintiffs,

COMPLAINT AND JURY CLAIM

v.

Marriott International, Inc.,
And Zurich North America
Defendants.

PARTIES

1. Plaintiff, Julia Heavern, is a minor represented by her parents and next friends, Denise and Paul Heavern who resides at 7 Glover Avenue, Hull, Massachusetts.
2. Plaintiff, Nicole Heavern, is a minor represented by her parents and next friends, Denise and Paul Heavern who resides at 7 Glover Avenue, Hull, Massachusetts.
3. Plaintiff, Kerin Mitchell, is a minor represented by her parents and next friends, Ellen and Jim Mitchell, who resides at 34 Nantasket Avenue, Hull, Massachusetts.
4. Plaintiff, Taylor Vieira, is a minor represented by his parents and next friends, Kathy and Steve Vieira, who resides at 51 Warfield Avenue, Hull, Massachusetts.
5. Plaintiff, Bryan Vieira, is a minor represented by his parents and next friends, Kathy and Steve Vieira, who resides at 51 Warfield Avenue, Hull, Massachusetts.

6. Defendant, Marriott International, Inc. (hereinafter "Marriott" or "Courtyard Marriott", is a corporation with a principle place of business at 10400 Fernwood Road, Department 862, Bethesda, Maryland.

7. Defendant, Zurich North America (hereinafter "Zurich") is a corporation with a principle place of business at 1400 American Lane, Schaumburg, Illinois.

JURISDICTION

7. The plaintiffs' cause of action arises from the defendant's (1) transacting business in Massachusetts; (2) contracting to supply and/or sell goods in Massachusetts; (3) doing or causing a tortuous act to be done in Massachusetts; and/or (4) causing the consequence of a tortuous act to occur within Massachusetts, and the defendants do, or solicit business, or engage in a persistent course of conduct or derive substantial revenue from the sale of goods in Massachusetts.

FACTS

8. On or about March 15, 2003, the plaintiffs were guests at the Courtyard, Marriott in Concord, New Hampshire.

9. On or about March 15, 2003, the plaintiffs spent approximately six hours swimming in the Courtyard Marriott's indoor swimming pool.

10. On information and belief, on the morning of said date, the defendant had "shocked" the swimming pool with excessive amounts of chlorine or other chemicals.

11. On information and belief, on this date, defendants posted no warnings that the pool had excessive or hazardous amounts of chlorine or other chemicals, nor did the defendants prevent guests from using the swimming pool.

12. On information and belief, the defendants did not use ordinary care, which included their regular practice of closing the pool after "shock" treatments and waiting until the chemical levels were safe before allowing patrons to use the pool.

13. On information and belief, the defendants did not warn of the non-obvious danger, known to the defendants, that the swimming pool contained unsafe and hazardous levels of chlorine and other chemicals.

14. On information and belief, the defendants did not make reasonable inspections in order to discover whether their guests were using the swimming pool during times when the levels of chlorine or other chemicals were at unsafe or dangerous levels.

15. Due to the exposure of high levels of chemicals in the defendant's swimming pool, all five plaintiffs sustained various injuries of varying degrees. These injuries include, but

are not limited to, chemical skin burns, chest discomfort, breathing difficulty, red and sore eyes and asthma.

16. As a direct and proximate cause of this incident, plaintiffs have accrued significant medical expenses, and certain plaintiffs will continue to accrue medical expenses. Furthermore, plaintiffs were temporarily incapacitated and prevented from participating in their usual activities for a substantial period of time, and have suffered varying degrees of emotional injuries.

COUNT I

JULIA HEAVERN, PPA DENISE AND PAUL HEAVERN V. COURTYARD MARRIOTT
NEGLIGENCE

17. Plaintiff, Julia Heavern, PPA Denise Heavern adopts by reference all of the allegations above, each inclusive, as though fully set forth herein.

18. As a direct and proximate result of the negligence of the defendant, the plaintiff Julia Heavern suffered personal injuries, including, but not limited to, 1st degree burns, acute breathing difficulty, and transient skin reaction.

WHEREFORE, plaintiff, Julia Heavern, PPA Denise Heavern, demands judgment against the defendant, Courtyard Marriott, in an amount to be determined at trial, together with interest and costs and such other relief as this Honorable Court may deem necessary.

COUNT II

NICOLE HEAVERN, PPA DENISE AND PAUL HEAVERN V. COURTYARD MARRIOTT
NEGLIGENCE

19. Plaintiff, Nicole Heavern, PPA Denise Heavern adopts by reference all of the allegations above, each inclusive, as though fully set forth herein.

20. As a direct and proximate result of the negligence of the defendant, the plaintiff Nicole Heavern suffered personal injuries, including, but not limited to acute difficulty breathing and nausea, burning skin, peeling skin, continuing chapped skin above her upper lip, enduring difficulty breathing, mild rash, transient skin reaction, and mild Reactive Airways Disease (asthma).

WHEREFORE, plaintiff, Nicole Heavern, PPA Denise Heavern, demands judgment against the defendant, Courtyard Marriott, in an amount to be determined at trial, together with interest and costs and such other relief as this Honorable Court may deem necessary.

COUNT III

KERIN MITCHELL, PPA ELLEN AND JIM MITCHELL V. COURTYARD MARRIOTT
NEGLIGENCE

21. Plaintiff, Kerin Mitchell, PPA Kathy Vieira, adopts by reference all of the allegations above, each inclusive, as though fully set forth herein.

22. As a direct and proximate result of the negligence of the defendant, the plaintiff Kerin Mitchell suffered personal injuries, including, but not limited to facial burns, breathing difficulty, sore throat, significant skin reaction for several weeks, and emotional trauma.

WHEREFORE, plaintiff, Kerin Mitchell, PPA Ellen Mitchell, demands judgment against the defendant, Courtyard Marriott, in an amount to be determined at trial, together with interest and costs and such other relief as this Honorable Court may deem necessary.

COUNT IV

TAYLOR VIEIRA, PPA KATHY STEVE VIERA V. COURTYARD MARRIOTT
NEGLIGENCE

23. Plaintiff, Taylor Vieira, PPA Kathy Vieira, adopts by reference all of the allegations above, each inclusive, as though fully set forth herein.

24. As a direct and proximate result of the negligence of the defendant, the plaintiff Taylor Vieira suffered personal injuries, including, but not limited to facial burns, breathing difficulty, sore throat, significant skin reaction for several weeks, and emotional trauma.

WHEREFORE, plaintiff, Taylor Vieira, PPA Kathy Vieira, demands judgment against the defendant, Courtyard Marriott, in an amount to be determined at trial, together with interest and costs and such other relief as this Honorable Court may deem necessary.

COUNT V

BRYAN VIEIRA, PPA KATHY AND STEVE VIERA V. COURTYARD MARRIOTT
NEGLIGENCE

25. Plaintiff, Bryan Vieira, PPA Kathy Vieira, adopts by reference all of the allegations above, each inclusive, as though fully set forth herein.

26. As a direct and proximate result of the negligence of the defendant, the plaintiff Bryan Vieira suffered personal injuries, including, but not limited to facial burns, breathing difficulty, sore throat, enduring red and irritated eyes, skin burns, skin irritation for weeks following the incident and exacerbation of pre-existing asthma as well as emotional injuries.

WHEREFORE, plaintiff, Bryan Vieira, PPA Kathy Vieira, demands judgment against the defendant, Courtyard Marriott, in an amount to be determined at trial, together with interest and costs and such other relief as this Honorable Court may deem necessary.

COUNT VI
JULIA HEAVERN, ET AL., V ZURICH NORTH AMERICA
VIOLATION OF M.G.L. c. 93A and
M.G.L. CHAPTER 176D, SECTION 3(9)(f)

27. Plaintiffs adopt by reference all of the allegations above, each inclusive, as though fully set forth within.

28. At all times references herein, defendants and insurance coverage through Zurich North America ("Zurich").

29. After unsuccessful attempts to resolve the matter over the phone, on June 21, 2004, each plaintiff sent Zurich a demand for settlement.

30. The defendants failed to respond to this demand letter within 30 days.

31. The defendant has failed to make a fair and equitable offer of settlement in response to said demands for relief.

32. The defendant's failure to make such an offer is a violation of G.L. c. 176D, §3(9)(f) in that said defendant failed to effectuate a prompt, fair and equitable settlement of a claim in which liability has become reasonably clear.

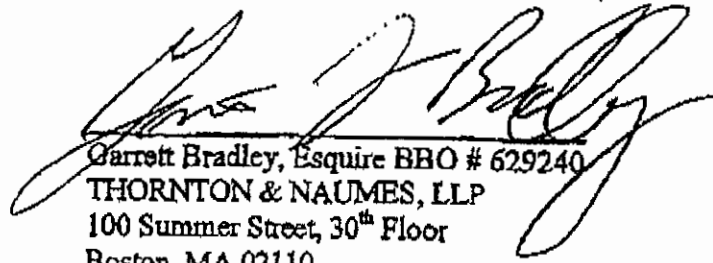
33. The defendant's failure to effectuate such a settlement is an unfair and deceptive trade act or practice within the meaning of G.L. c. 93A § 2.

34. The defendant is liable to the plaintiff for the plaintiff's actual damages and for punitive damages up to three times the actual damages, plus interest, costs and attorney's fees.

Wherefore, the plaintiffs demand judgment against the defendant in an amount to be determined at trial, including treble damages, together with interest, costs and such other relief as this Honorable Court deems necessary and proper.

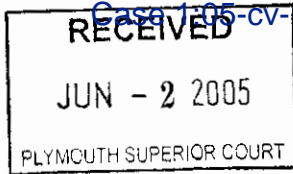
PLAINTIFFS RESERVE THE RIGHT TO A JURY TRIAL ALL COUNTS
CONTAINED WITHIN THIS COMPLAINT

Respectfully submitted by the Plaintiffs,
By their Attorney,

A handwritten signature in black ink, appearing to read "Garrett Bradley", is written over the printed name and firm information.

Garrett Bradley, Esquire BBO # 629240
THORNTON & NAUMES, LLP
100 Summer Street, 30th Floor
Boston, MA 02110
(617) 730-1333

Dated: March 10, 2005



COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

**SUPERIOR COURT
CIVIL ACTION NO. PLCV 2005-00287-B**

_____)
JULIA HEAVERN, et al.)
)
Plaintiffs,)
)
v.)
)
MARRIOTT INTERNATIONAL, INC.)
and ZURICH NORTH AMERICA,)
)
Defendants.)
_____)

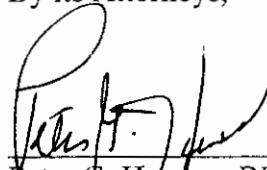
NOTICE OF REMOVAL

TO: Clerk for Civil Business
Plymouth Superior Court
Court Street
Plymouth, MA 02360

PLEASE TAKE NOTICE THAT pursuant to 28 U.S.C. §1446(d), the Defendant Zurich North America ("Defendant" or "Zurich")¹, hereby gives notice that, in accordance with 28 U.S.C. §1441, it filed a Notice of Removal of this action from the Plymouth County Superior Court to the United States District Court for the District of Massachusetts based upon the fact that the United States District Court for the District of Massachusetts has original jurisdiction over this matter.

¹ The Plaintiff has misnamed the Defendant in its Complaint. The Defendant's proper name is "Zurich American Insurance Company."

ZURICH AMERICAN INSURANCE COMPANY,
By its Attorneys,



Peter G. Hermes, BBO. No. 231840

Gina A. Fonte, BBO No. 642367

HERMES, NETBURN, O'CONNOR &
SPEARING, P.C.

111 Devonshire Street, 8th Floor

Boston, MA 02110

(617) 728-0050

(617) 728-0052 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 2005, I served on counsel of record the above notice by mailing a copy thereof, postage prepaid, to:

Garrett Bradley, Esquire
THORNTON & NAUMES, LLP
1000 Summer Street, 30th Floor
Boston, MA 02110

Anthony Campo, Esq.
Boyle, Morrissey & Campo
25 Stuart Street
Boston, MA 02116



Gina A. Fonte

G:\DOCS\PGH\clients\zurich\Heaven\Pleadings\Notice of Removal State Court.doc

A TRUE COPY ATTEST


CLERK

HERMES, NETBURN, O'CONNOR & SPEARING, P.C.

ATTORNEYS AT LAW

111 DEVONSHIRE STREET, EIGHTH FLOOR

BOSTON, MASSACHUSETTS 02109

TELEPHONE (617) 728-0050

TELECOPIER (617) 728-0052

RECEIVED

JUN - 2 2005

PLYMOUTH SUPERIOR COURT

PETER G. HERMES
PETER C. NETBURN
KEVIN J. O'CONNOR
SCOTT S. SPEARING
GINA A. FONTE
JOHN R. FELICE
MICHAEL S. BATSON
RYAN T. KILLMAN

DIRECT DIAL NUMBER

(617) 210-7755

June 1, 2005

Clerk for Civil Business
United States District Court for the
District of Massachusetts
1 Courthouse Way
Boston, Massachusetts 02210

RE: Julia Heavern, et al. v. Zurich North America

Dear Sir/Madam:

Enclosed for filing are the following documents:

1. Civil Cover Sheet;
2. Category Sheet;
3. Notice of Removal, with attachments; and
4. Filing Fee of \$250.00.

Should you have any questions regarding the enclosed, please do not hesitate to contact me. Thank you for your assistance.

Very truly yours,



Gina A. Fonte

GAF:pmv

Enclosures

cc: ✓ Garrett J. Bradley, Esquire (with enclosure)

Anthony M. Campo, Esquire (with enclosure)

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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Heavern, Julia

(b) County of Residence of First Listed Plaintiff Plymouth
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Garrett Bradley, Thornton & Naumes, LLP
100 Summer Street, 30th Fl.
Boston, MA 02110 (617) 730-1333

DEFENDANTS

Zurich North America; Marriott International, Inc.

County of Residence of First Listed Defendant n/a
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

See Attachment

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination U.S. Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

Brief description of cause:

Negligence; M.G.L. c. 93A/176D Section 3(9)(F)

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

6/1/05

SIGNATURE OF ATTORNEY OF RECORD Peter G. Hermes

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ATTACHMENT

Counsel For The Defendants

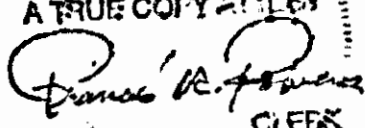
I. Counsel For Zurich American Insurance Company

Peter G. Hermes,
HERMES, NETBURN, O'CONNOR,
& SPEARING, P.C.
111 Devonshire Street, Eighth Floor
Boston, MA 02109-5407
(617) 728-0050 – Tel.
(617) 728-0052 – Fax

Gina A. Fonte, BBO No. 642367
HERMES, NETBURN, O'CONNOR
& SPEARING, P.C.
111 Devonshire Street, Eighth Floor
Boston, MA 02109
(617) 728-0050 – Tel.
(617) 728-0052 – Fax

II. Counsel For Marriott International Inc.

Anthony Campo, Esq.
Boyle, Morrissey & Campo
25 Stuart Street
Boston, MA 02116

A TRUE COPY ATTEST

CLERK

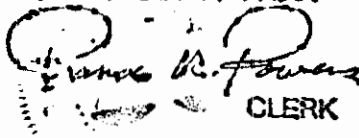
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Heavern, Julia v. Zurich North America
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
n/a
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

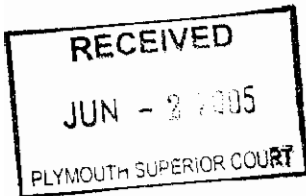
ATTORNEY'S NAME Peter G. Hermes; Gina A. FonteADDRESS 111 Devonshire Street, 8th Floor, Boston, MA 02109TELEPHONE NO. (617) 728-0050

A TRUE COPY ATTEST



CLERK

(CategoryForm.wpd - 5/2/05)



HERMES, NETBURN, O'CONNOR & SPEARING, P.C.

ATTORNEYS AT LAW
111 DEVONSHIRE STREET, EIGHTH FLOOR
BOSTON, MASSACHUSETTS 02109
TELEPHONE (617) 728-0050
TELECOPIER (617) 728-0052

PETER G. HERMES
PETER C. NETBURN
KEVIN J. O'CONNOR
SCOTT S. SPEARING
GINA A. FONTE
JOHN R. FELICE
MICHAEL S. BATSON
RYAN T. KILLMAN

DIRECT DIAL NUMBER

(617) 210-7755

June 1, 2005

Clerk for Civil Business
Plymouth Superior Court
Court Street
Plymouth, MA 02360

RE: Julia Heavern, et al. v. Zurich North America,
C.A. No.: 2005-00287-B

Dear Sir/Madam:

Enclosed for filing is the Defendant, Zurich North America's *Notice of Removal*.

Please prepare certified copies of all pleadings so that I may forward them to the United States District Court for the District of Massachusetts. If there is a charge for such pleadings, please contact me upon receipt of this letter so that I may forward a check in the appropriate amount.

Thank you for your assistance.

Very truly yours,

Gina A. Fonte

GAF

Enclosure

cc: ✓ Garrett J. Bradley, Esquire (with enclosure)
Anthony M. Campo, Esquire (with enclosure)

G:\DOCS\PGH\clients\zurich\Heavern\Letters\State Clerk NOR.doc

Y

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT

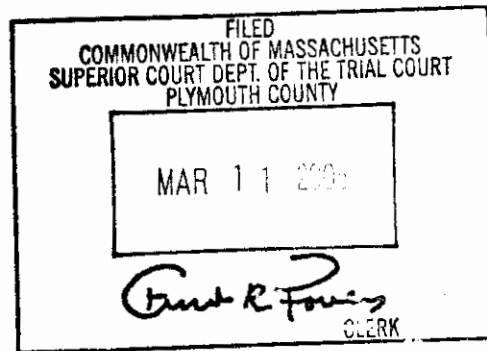
C.A. NO.:

✓
 Julia Heavern, by her parents
 and next friends, Denise and Paul
 Heavern, ✓ Nicole Heavern, by her
 parents and next friends, Denise
 and Paul Heavern, ✓ Kerin Mitchell,
 by her parents and
 next friends, Ellen and Jim Mitchell,
 ✓ Taylor Vieira, by her parents and
 next friend, Kathy and Steve Vieira,
 and ✓ Brian Vieira, by his parents
 and next friends, Kathy and
 Steve Vieira,

Plaintiffs,

v.

Marriott International, Inc.,
 And Zurich North America
 Defendants.

COMPLAINT AND JURY CLAIMPARTIES

1. Plaintiff, Julia Heavern, is a minor represented by her parents and next friends, Denise and Paul Heavern who resides at 7 Glover Avenue, Hull, Massachusetts.
2. Plaintiff, Nicole Heavern, is a minor represented by her parents and next friends, Denise and Paul Heavern who resides at 7 Glover Avenue, Hull, Massachusetts.
3. Plaintiff, Kerin Mitchell, is a minor represented by her parents and next friends, Ellen and Jim Mitchell, who resides at 34 Nantasket Avenue, Hull, Massachusetts.
4. Plaintiff, Taylor Vieira, is a minor represented by his parents and next friends, Kathy and Steve Vieira, who resides at 51 Warfield Avenue, Hull, Massachusetts.
5. Plaintiff, Bryan Vieira, is a minor represented by his parents and next friends, Kathy and Steve Vieira, who resides at 51 Warfield Avenue, Hull, Massachusetts.

#1260.00 Entry fee + 5 summonses
 p.d. T.O. sent

6. Defendant, Marriott International, Inc. (hereinafter "Marriott" or "Courtyard Marriott", is a corporation with a principle place of business at 10400 Fernwood Road, Department 862, Bethesda, Maryland.

7. Defendant, Zurich North America (hereinafter "Zurich") is a corporation with a principle place of business at 1400 American Lane, Schaumburg, Illinois.

JURISDICTION

7. The plaintiffs' cause of action arises from the defendant's (1) transacting business in Massachusetts; (2) contracting to supply and/or sell goods in Massachusetts; (3) doing or causing a tortuous act to be done in Massachusetts; and/or (4) causing the consequence of a tortuous act to occur within Massachusetts, and the defendants do, or solicit business, or engage in a persistent course of conduct or derive substantial revenue from the sale of goods in Massachusetts.

FACTS

8. On or about March 15, 2003, the plaintiffs were guests at the Courtyard, Marriott in Concord, New Hampshire.

9. On or about March 15, 2003, the plaintiffs spent approximately six hours swimming in the Courtyard Marriott's indoor swimming pool.

10. On information and belief, on the morning of said date, the defendant had "shocked" the swimming pool with excessive amounts of chlorine or other chemicals.

11. On information and belief, on this date, defendants posted no warnings that the pool had excessive or hazardous amounts of chlorine or other chemicals, nor did the defendants prevent guests from using the swimming pool.

12. On information and belief, the defendants did not use ordinary care, which included their regular practice of closing the pool after "shock" treatments and waiting until the chemical levels were safe before allowing patrons to use the pool.

13. On information and belief, the defendants did not warn of the non-obvious danger, known to the defendants, that the swimming pool contained unsafe and hazardous levels of chlorine and other chemicals.

14. On information and belief, the defendants did not make reasonable inspections in order to discover whether their guests were using the swimming pool during times when the levels of chlorine or other chemicals were at unsafe or dangerous levels.

15. Due to the exposure of high levels of chemicals in the defendant's swimming pool, all five plaintiffs sustained various injuries of varying degrees. These injuries include, but

are not limited to, chemical skin burns, chest discomfort, breathing difficulty, red and sore eyes and asthma.

16. As a direct and proximate cause of this incident, plaintiffs have accrued significant medical expenses, and certain plaintiffs will continue to accrue medical expenses. Furthermore, plaintiffs were temporarily incapacitated and prevented from participating in their usual activities for a substantial period of time, and have suffered varying degrees of emotional injuries.

COUNT I

JULIA HEAVERN, PPA DENISE AND PAUL HEAVERN V. COURTYARD MARRIOTT
NEGLIGENCE

17. Plaintiff, Julia Heavern, PPA Denise Heavern adopts by reference all of the allegations above, each inclusive, as though fully set forth herein.

18. As a direct and proximate result of the negligence of the defendant, the plaintiff Julia Heavern suffered personal injuries, including, but not limited to, 1st degree burns, acute breathing difficulty, and transient skin reaction.

WHEREFORE, plaintiff, Julia Heavern, PPA Denise Heavern, demands judgment against the defendant, Courtyard Marriott, in an amount to be determined at trial, together with interest and costs and such other relief as this Honorable Court may deem necessary.

COUNT II

NICOLE HEAVERN, PPA DENISE AND PAUL HEAVERN V. COURTYARD MARRIOTT
NEGLIGENCE

19. Plaintiff, Nicole Heavern, PPA Denise Heavern adopts by reference all of the allegations above, each inclusive, as though fully set forth herein.

20. As a direct and proximate result of the negligence of the defendant, the plaintiff Nicole Heavern suffered personal injuries, including, but not limited to acute difficulty breathing and nausea, burning skin, peeling skin, continuing chapped skin above her upper lip, enduring difficulty breathing, mild rash, transient skin reaction, and mild Reactive Airways Disease (asthma).

WHEREFORE, plaintiff, Nicole Heavern, PPA Denise Heavern, demands judgment against the defendant, Courtyard Marriott, in an amount to be determined at trial, together with interest and costs and such other relief as this Honorable Court may deem necessary.

COUNT III

KERIN MITCHELL, PPA ELLEN AND JIM MITCHELL V. COURTYARD MARRIOTT
NEGLIGENCE

21. Plaintiff, Kerin Mitchell, PPA Kathy Vieira, adopts by reference all of the allegations above, each inclusive, as though fully set forth herein.

22. As a direct and proximate result of the negligence of the defendant, the plaintiff Kerin Mitchell suffered personal injuries, including, but not limited to facial burns, breathing difficulty, sore throat, significant skin reaction for several weeks, and emotional trauma.

WHEREFORE, plaintiff, Kerin Mitchell, PPA Ellen Mitchell, demands judgment against the defendant, Courtyard Marriott, in an amount to be determined at trial, together with interest and costs and such other relief as this Honorable Court may deem necessary.

COUNT IV

TAYLOR VIEIRA, PPA KATHY STEVE VIERA V. COURTYARD MARRIOTT
NEGLIGENCE

23. Plaintiff, Taylor Vieira, PPA Kathy Vieira, adopts by reference all of the allegations above, each inclusive, as though fully set forth herein.

24. As a direct and proximate result of the negligence of the defendant, the plaintiff Taylor Vieira suffered personal injuries, including, but not limited to facial burns, breathing difficulty, sore throat, significant skin reaction for several weeks, and emotional trauma.

WHEREFORE, plaintiff, Taylor Vieira, PPA Kathy Vieira, demands judgment against the defendant, Courtyard Marriott, in an amount to be determined at trial, together with interest and costs and such other relief as this Honorable Court may deem necessary.

COUNT V

BRYAN VIEIRA, PPA KATHY AND STEVE VIERA V. COURTYARD MARRIOTT
NEGLIGENCE

25. Plaintiff, Bryan Vieira, PPA Kathy Vieira, adopts by reference all of the allegations above, each inclusive, as though fully set forth herein.

26. As a direct and proximate result of the negligence of the defendant, the plaintiff Bryan Vieira suffered personal injuries, including, but not limited to facial burns, breathing difficulty, sore throat, enduring red and irritated eyes, skin burns, skin irritation for weeks following the incident and exacerbation of pre-existing asthma as well as emotional injuries.

WHEREFORE, plaintiff, Bryan Vieira, PPA Kathy Vieira, demands judgment against the defendant, Courtyard Marriott, in an amount to be determined at trial, together with interest and costs and such other relief as this Honorable Court may deem necessary.

COUNT VI
JULIA HEAVERN, ET AL., V ZURICH NORTH AMERICA
VIOLATION OF M.G.L. c. 93A and
M.G.L. CHAPTER 176D, SECTION 3(9)(f)

27. Plaintiffs adopt by reference all of the allegations above, each inclusive, as though fully set forth within.

28. At all times references herein, defendants and insurance coverage through Zurich North America ("Zurich").

29. After unsuccessful attempts to resolve the matter over the phone, on June 21, 2004, each plaintiff sent Zurich a demand for settlement.

30. The defendants failed to respond to this demand letter within 30 days.

31. The defendant has failed to make a fair and equitable offer of settlement in response to said demands for relief.

32. The defendant's failure to make such an offer is a violation of G.L. c. 176D, §3(9)(f) in that said defendant failed to effectuate a prompt, fair and equitable settlement of a claim in which liability has become reasonably clear.

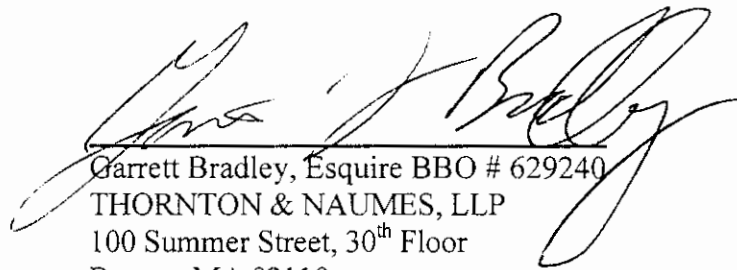
33. The defendant's failure to effectuate such a settlement is an unfair and deceptive trade act or practice within the meaning of G.L. c. 93A § 2.

34. The defendant is liable to the plaintiff for the plaintiff's actual damages and for punitive damages up to three times the actual damages, plus interest, costs and attorney's fees.

Wherefore, the plaintiffs demand judgment against the defendant in an amount to be determined at trial, including treble damages, together with interest, costs and such other relief as this Honorable Court deems necessary and proper.

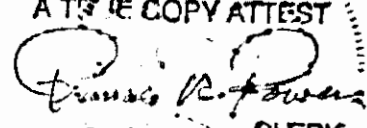
PLAINTIFFS RESERVE THE RIGHT TO A JURY TRIAL ALL COUNTS
CONTAINED WITHIN THIS COMPLAINT

Respectfully submitted by the Plaintiffs,
By their Attorney,



Garrett Bradley, Esquire BBO # 629240
THORNTON & NAUMES, LLP
100 Summer Street, 30th Floor
Boston, MA 02110
(617) 730-1333

Dated: March 10, 2005

ATTEST COPY ATTEST

CLERK

**CIVIL ACTION
COVER SHEET**

DOCKET NO.(S)

Trial Court of Massachusetts
Superior Court Department
County: PlymouthPLAINTIFF(S)
Julia Heavern, et al.DEFENDANT(S)
Marriott International, Inc., et al.ATTORNEY, FIRM, ADDRESS AND TELEPHONE (617) 720-1333
Allyson S. Hauck, Esquire
Garret J. Bradley, Esquire
THORNTON & NAUMES, LLP
100 Summer St., 30th Fl., Boston, MA 02110
Board of Bar Overseers number: 659547 and 629240

ATTORNEY (if known)

FILED
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT. OF THE TRIAL COURT
PLYMOUTH COUNTY

MAR 11 2005

Origin code and track designation

Place and x in one box only:

☒ 1.FO1 Original Complaint☐ 2.FO2 Removal to Sup.Ct. C.231, s.104
(Before trial) (F)☐ 3.FO3 Retransfer to Sup.Ct.C.231,s.102C(X)

- ☐
- 4.F04 District Court Appeal c.231,s.97 & 104
-
- (After trial) (X)
-
- ☐
- 5.F05 Reactivated after rescript; relief
-
- from judgment/Order (Mass.R.Civ.P.60) (X)
-
- ☐
- 6.E10 Summary Process Appeal (X)

Gust P. Jones
CLERK

TYPE OF ACTION AND TRACK DESIGNATION (See Reverse Side)

CODE NO. TYPE OF ACTION (specify) TRACK IS THIS A JURY CASE?

Boj Personal Injury (F) (X) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

A. Documented medical expenses to date:

- | | |
|------------------------------------|-------------|
| 1. Total hospital expenses | \$ 5,000.00 |
| 2. Total Doctor expenses | \$ 700.00 |
| 3. Total chiropractic expenses | \$ |
| 4. Total physical therapy expenses | \$ |
| 5. Total other expenses (describe) | \$ |

Subtotal \$ 5,700.00.

- | | |
|--|---------------|
| B. Documented lost wages and compensation to date | \$ |
| C. Documented property damages to date | \$ |
| D. Reasonably anticipated future medical and hospital expenses | \$ 125,000.00 |
| E. Reasonably anticipated lost wages | \$ |
| F. Other documented items of damages (describe) | \$ |

G. Brief description of plaintiff's injury, including nature and extent of injury (describe): Five minor Plaintiffs were exposed to dangerous levels of chemicals at Defendant's hotel pool. All experienced severe facial burns, trouble breathing and skin rash. Some of the children had experienced severe eye irritation. One of the children had exacerbation of asthma for 1 to 2 months following the exposure. Another child was put on an inhaler and continues to use this inhaler to date. Another child developed mild Reactive Airway Disease. As a result of the exposure, all children experienced some level of emotional trauma.

TOTAL \$..130,000.00

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

APPROVED BY

CLERK

DATE: March 10 2005

**Commonwealth of Massachusetts
County of Plymouth
The Superior Court**

Copy

CIVIL DOCKET# **PLCV2005-00287-B**

**RE: Heavern, ppa; by her parents & next friends Denise & Paul Heaven et al v
Marriott International, Inc. et al**

TO: Garrett J Bradley, Esquire
Thornton & Naumes
100 Summer Street
30th floor
Boston, MA 02110

TRACKING ORDER - F TRACK

You are hereby notified that this case is on the **fast (F) track** as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE

Service of process made and return filed with the Court	06/09/2005
Response to the complaint filed (also see MRCP 12)	08/08/2005
All motions under MRCP 12, 19, and 20 filed	08/08/2005
All motions under MRCP 15 filed	08/08/2005
All discovery requests and depositions completed	01/05/2006
All motions under MRCP 56 served and heard	02/04/2006
Final pre-trial conference held and firm trial date set	03/06/2006
Case disposed	05/05/2006

The final pre-trial deadline is **not the scheduled date of the conference**. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to session B sitting in CtRm 1 (Court Street, Plymouth) at Plymouth Superior Court.

Dated: 03/11/2005

Francis R. Powers
Clerk of the Courts

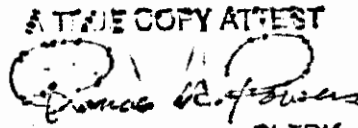
BY: Adam Baler
Assistant Clerk

Location: CtRm 1 (Court Street, Plymouth)
Telephone: (508) 747-6911

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

Check website as to status of case: <http://ma-trialcourts.org/tcic>

cvdtracf_2.wpd 448350 inidoc01 campbell

A TRUE COPY ATTEST

CLERK

PLYMOUTH
 Julia Heavem, by her parents and next
 Friends, Denise and Paul Heavem,
 Nicole Heavem, by her parents and
 Next friend Denise and Paul Heavem,
 Kerin Mitchell, by her parents and
 Next friends, Ellen and Jim Mitchell,
 Taylor Vieira, by her parents and
 Next friend, Kathy and Steve Vieira, , Plaintiff(s)
 And Brian Vieira, by his parents and
 Next friends, Kathy and Steve Vieira

COMMONWEALTH OF MASSACHUSETTS
 SUPERIOR COURT DEPARTMENT OF THE
 TRIAL COURT OF THE COMMONWEALTH
 CIVIL ACTION NO. PLCV2005-00287-B

2

RECEIVED
 APR 19 2005
 PLYMOUTH SUPERIOR COURT

Marriott International, Inc., et al.,
 Defendant(s)

SUMMONS

To the above-named defendant: Prentice-Hall Corporation, Agent For Marriott International, Inc.
 84 State Street, Suffolk County, Boston, MA 02109

You are hereby summoned and required to serve upon Allyson S. Hauck, Esq., plaintiff
 attorney, whose address is 100 Summer St., 30th Fl., Boston, MA 02110 (617) 720-1333
 an answer to the complaint
 which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day
 service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the
 complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at
 Plymouth either before service upon plaintiff attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which
 you may have against the plaintiff which arises out of the transaction or occurrence that is the subject
 matter of the plaintiff claim or you will thereafter be barred from making such claim in any other action.

Witness, Barbara J. Brown, Clerk of the Court, 31st day of
 March

FILED
 COMMONWEALTH OF MASSACHUSETTS
 SUPERIOR COURT DEPT. OF THE TRIAL COURT
 PLYMOUTH COUNTY
 APR 19 2005

CLERK
 Ernest R. Farias

NOTES

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption.
 If a separate summons is used for each defendant, each should be addressed to the particular
 defendant.
3. To the plaintiff's attorney: please circle type of action involved-Tort-Motor Vehicle Tort-Contract-
 Equitable Relief-Other.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on _____, 2004, I served a copy of the within summons
 together with a copy with a copy of the complaint in this action, upon the within-named defendant , in the
 following manner(See Mass. R. Civ. P. 4(d)(1-5):

Dated: _____, 2004.

N.B. TO PROCESS SERVER:-

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL
 AND ON COPY SERVED ON DEFENDANT.

_____, 2004

ATTEST COPY ATTEST
 Ernest R. Farias
 CLERK

copy of your written answer within 20 days after service

5/19/05

3

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT

CIVIL ACTION NO. PLCV 2005-00287-B

Julia Heavern, et al.,

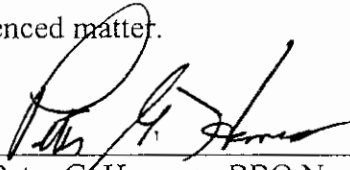
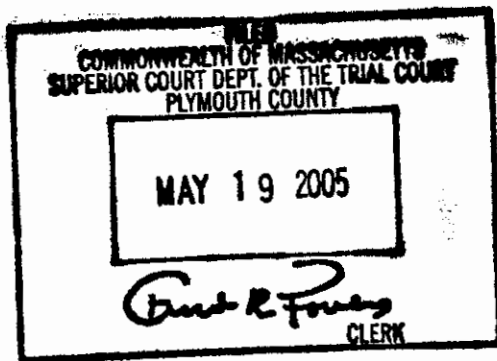
Plaintiffs,

v.

Marriott International, Inc.,
And Zurich North AmericaDefendants.
_____NOTICE OF APPEARANCE


TO THE CLERK OF THE ABOVE-NAMED COURT:

Please enter the appearance of **Peter G. Hermes** and **Gina A. Fonte** as counsel for the defendant, Zurich North America, in the above-referenced matter.


Peter G. Hermes, BBO No. 231840
HERMES, NETBURN, O'CONNOR,
& SPEARING, P.C.111 Devonshire Street, Eighth Floor
Boston, MA 02109-5407

(617) 728-0050 – Tel.

(617) 728-0052 – Fax


Gina A. Fonte, BBO No. 642367
HERMES, NETBURN, O'CONNOR
& SPEARING, P.C.111 Devonshire Street, Eighth Floor
Boston, MA 02109

(617) 728-0050 – Tel.

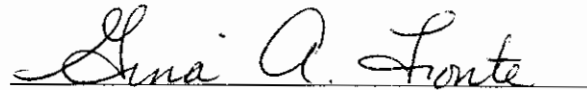
(617) 728-0052 -- Fax

Dated: May 18th, 2005

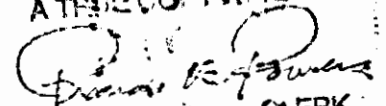
CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of May, 2005, I served the foregoing document by first class mail, postage prepaid, upon the following counsel of record:

Garrett J. Bradley, Esq.
100 Summer Street, 30th Floor
Boston, MA 02110


Gina A. Fonte

G:\DOCS\PGH\clients\unrich\Heaven\Pleadings\Appearance.doc

A TRUE COPY ATTEST

CLERK

COMMONWEALTH OF MASSACHUSETTS

FOREIGN

514593

PLYMOUTH, ss.

Julia Heavern, by her parents and next
 Friends, Denise and Paul Heavern,
 Nicole Heavern, by her parents and
 Next friend Denise and Paul Heavern,
 Kerin Mitchel, by her parents and
 Next friends, Ellen and Jim Mitchell,
 Taylor Vieira, by her parents and
 Next friend, Kathy and Steve Vieira,
 And Brian Vieira, by his parents and
 Next friends, Kathy and Steve Vieira

SUPERIOR COURT DEPARTMENT OF THE
TRIAL COURT OF THE COMMONWEALTH
CIVIL ACTION

NO. PLCV 205-00287-B

Plaintiff(s)

vs.

Marriott International, Inc., and
 Zurich North America,

Defendant(s)

SUMMONS

To the above-named defendant : Person In Charge of Business for Zurich North America,
 1400 American Lane, Schaumburg, Cook County, Illinois. Garrett J. Bradley, Esquire
 You are hereby summoned and required to serve upon
 plaintiff attorney, whose address is 100 Summer St., 30th Flr., Boston, MA 02110
 complaint which is herewith served upon you, within 20 days aft
 exclusive of the day of service. If you fail to do so, judgment by
 the relief demanded in the complaint. You are also required to fi
 office of the Clerk of this court at Brockton either before service
 reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must
 you may have against the plaintiff which arises out of the transa
 matter of the plaintiff claim or you will thereafter be barred from

Witness Barbara J. Rouse Esquire, at Plymouth the
 May , in the year of our Lord one thousand

NOTES

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. To plaintiff's attorney: please circle type of action involved - Tort - Motor Vehicle Tort - Contract - Equitable Relief - Other.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on , 19 , I served a copy
 of the within summons, together with a copy of the complaint in this action, upon the within-named
 defendant , in the following manner (See Mass. R. Civ. P. 4 (d) (1-5):

Dated: , 19

N.B. TO PROCESS SERVER:-

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON
 THE ORIGINAL AND ON COPY SERVED ON DEFENDANT

FILED
 COMMONWEALTH OF MASSACHUSETTS
 SUPERIOR COURT DEPT. OF THE TRIAL COURT
 PLYMOUTH COUNTY

MAY 24 2005

CLERK

, 19

NOTICE TO DEFENDANT- You need not appear personally in court to answer the complaint,
 but if you claim to have a defense, either you or your attorney must serve a copy of
 your written answer within 20 days as specified herein and also file the original in
 the Clerk's Office at Brockton.

SHERIFF'S NUMBER 514593-001D CASE NUMBER PLCV20050028 DEPUTY: Green 4965

FILED DT 05-05-2005 RECEIVED DT 05-06-2005 DIE DT 05-20-2005 MULTIPLE SERVICE 1

DEFENDANT
ZURICH NORTH AMERICA
1400 AMERICAN LN
SCHAUMBURG IL. 60173

ATTORNEY
THORNTON & NAUMES
100 SUMMIT ST
BOSTON MA. 00000

FOREIGN

PLAINTIFF PLYMOUTH

SERVICE INFORMATION: LR C/O GARRETT J BRADLEY

(A) I CERTIFY THAT I SERVED THIS SUMMONS ON THE DEFENDANT AS FOLLOWS:

-1 PERSONAL SERVICE: BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT WITH THE NAMED DEFENDANT PERSONALLY.
-2 SUBSTITUTE SERVICE: BY LEAVING A COPY OF THE SUMMONS AND A COPY OF THE COMPLAINT AT THE DEFENDANT'S USUAL PLACE OF ABODE WITH SOME PERSON OF THE FAMILY OR A PERSON RESIDING THERE, OF THE AGE OF 13 YEARS OR UPWARDS, AND INFORMING THAT PERSON OF THE CONTENTS THEREOF. ALSO, A COPY OF THE SUMMONS WAS MAILED ON THE _____ DAY OF _____ 20____, IN A SEALED ENVELOPE WITH POSTAGE FULLY PREPAID, ADDRESSED TO THE DEFENDANT AT HIS OR HER USUAL PLACE OF ABODE.
- SAID PARTY REFUSED NAME _____
-3 SERVICE ON: CORPORATION ☒ COMPANY ☐ BUSINESS ☐ PARTNERSHIP ☐
BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT (OR INTERROGATORIES) WITH THE REGISTERED AGENT, AUTHORIZED PERSON OR PARTNER OF THE DEFENDANT.
-4 CERTIFIED MAIL _____

(B) MICHAEL F. SHEAHAN, SHERIFF, BY: R Green 4965, DEPUTY1 SEX F M/F RACE W AGE 332 NAME OF DEFENDANT ZURICH NORTH AMERICAW RIT SERVED ON Elena Gancella A10THIS 12 DAY OF May, 2005 TIME 10:40 A.M. P.M.

ADDITIONAL REMARKS _____

THE NAMED DEFENDANT WAS NOT SERVED.

TYPE OF BLDG chh

ATTEMPTED SERVICES

NEIGHBORS NAME _____

DATE TIME A.M./P.M.

ADDRESS _____

5-12 10:40 4965

REASON NOT SERVED:

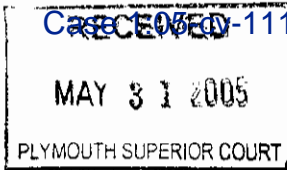
- | | |
|---|--|
| <input type="checkbox"/> 01 MOVED | <input type="checkbox"/> 07 EMPLOYER REFUSAL |
| <input type="checkbox"/> 02 NO CONTACT | <input type="checkbox"/> 08 RETURNED BY ATTY |
| <input type="checkbox"/> 03 EMPTY LOT | <input type="checkbox"/> 09 DECEASED |
| <input type="checkbox"/> 04 NOT LISTED | <input type="checkbox"/> 10 BLDG DEMOLISHED |
| <input type="checkbox"/> 05 WRONG ADDRESS | <input type="checkbox"/> 11 NO REGISTERED AGT. |
| <input type="checkbox"/> 06 NO SUCH ADDRESS | <input type="checkbox"/> 12 OTHER REASONS |
| | <input type="checkbox"/> 13 OUT OF COUNTY |

A TRUE COPY ATTEST

[Signature]
CLERK

FEE .00 MILEAGE .00 TOTAL .00

SG18



COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT

CIVIL ACTION NO. PLCV 2005-00287-B

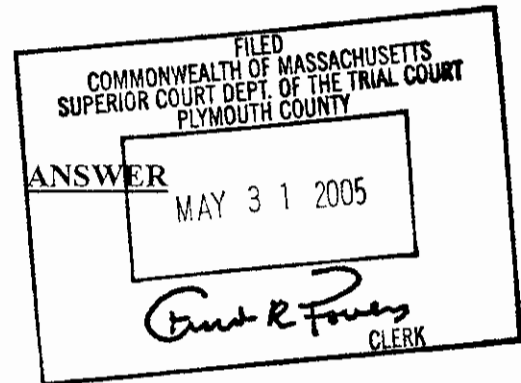
JULIA HEAVERN, et al.

Plaintiffs,

v.

MARRIOTT INTERNATIONAL, INC.
and ZURICH NORTH AMERICA,

Defendants.



The Defendant, Zurich American Insurance Company incorrectly identified as Zurich North American ("Zurich") answers the Plaintiffs' Complaint ("Complaint"), as follows:

PARTIES

1. Zurich is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint.
2. Zurich is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint.
3. Zurich is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint.
4. Zurich is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint.
5. Zurich is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint.

6. Zurich is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint.

7. The Defendant, "Zurich American Insurance Company," incorrectly identified as "Zurich North America," admits that it is a corporation with a principal place of business at 1400 American Lane, Schaumburg, Illinois.

JURISDICTION

7. [sic] Zurich admits that this court has personal jurisdiction over Zurich. Zurich denies the remaining allegations, characterizations and conclusions stated in Paragraph 7 [sic] of the Complaint.

FACTS

8. Zurich is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint.

9. Zurich is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint.

10. Zurich is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint.

11. Zurich is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint.

12. Zurich denies the allegations contained in Paragraph 12 of the Complaint.

13. Zurich denies the allegations contained in Paragraph 13 of the Complaint.

14. Zurich denies the allegations contained in Paragraph 14 of the Complaint.

15. Zurich denies the allegations contained in Paragraph 15 of the Complaint.

16. Zurich denies the allegations contained in Paragraph 16 of the Complaint.

COUNT I
JULIA HEAVERN, PPA DENISE AND PAUL HEAVERN V. COURTYARD MARRIOTT
NEGLIGENCE

17. Zurich incorporates herein by reference its Answers to Paragraphs 1 through 16 as if fully set forth herein.

18. Zurich states that the allegations of Paragraph 18 are directed to another party and Zurich is not required to file a responsive Answer. To the extent an Answer is required, Zurich denies the allegations contained in Paragraph 18 of the Complaint.

COUNT II
NICOLE HEAVERN, PPA, DENISE AND PAUL HEAVERN V. COURTYARD MARRIOTT
NEGLIGENCE

19. Zurich incorporates herein by reference its Answers to Paragraphs 1 through 18 as if fully set forth herein.

20. Zurich states that the allegations of Paragraph 20 are directed to another party and Zurich is not required to file a responsive Answer. To the extent an Answer is required, Zurich denies the allegations contained in Paragraph 20 of the Complaint.

COUNT III
KERIN MITCHELL, PPA ELLEN AND JIM MITCHELL V. COURTYARD MARRIOTT
NEGLIGENCE

21. Zurich incorporates herein by reference its Answers to Paragraphs 1 through 20, as if fully set forth herein.

22. Zurich states that the allegations of Paragraph 22 are directed to another party and Zurich is not required to file a responsive Answer. To the extent an Answer is required, Zurich denies the allegations contained in Paragraph 22 of the Complaint.

COUNT IV
TAYLOR VIEIRA, PPA KATHY STEVEN VIERA V. COURTYARD MARRIOTT
NEGLIGENCE

23. Zurich incorporates herein by reference its Answers to Paragraphs 1 through 22 as if fully set forth herein.

24. Zurich states that the allegations of Paragraph 24 are directed to another party and Zurich is not required to file a responsive Answer. To the extent an Answer is required, Zurich denies the allegations contained in Paragraph 24 of the Complaint.

COUNT V
BRYAN VIEIRA, PPA KATHY AND STEVE VIERA V. COURTYARD MARRIOTT
NEGLIGENCE

25. Zurich incorporates herein by reference its Answers to Paragraphs 1 through 24, as if fully set forth herein.

26. Zurich states that the allegations of Paragraph 26 are directed to another party and Zurich is not required to file a responsive Answer. To the extent an Answer is required, Zurich denies the allegations contained in Paragraph 26 of the Complaint.

COUNT VI
JULIA HEAVERN, ET AL. V. ZURICH NORTH AMERICA
VIOLATION OF M.G.L.c. 93A AND
M.G.L. CHAPTER 176D, SECTION 3(9)(f)

27. Zurich incorporates herein by reference its Answers to Paragraphs 1 through 26 as if fully set forth herein.

28. Zurich admits Defendant, Marriott International, Inc. had insurance coverage with Zurich American Insurance Company under the Policy No. CPO 2867731-00 which was in effect from December 1, 2002 through December 1, 2003

29. Zurich admits that it received a letter dated June 21, 2004 from each of the Plaintiffs. Zurich denies the remaining allegations, characterizations and conclusions contained in Paragraph 29.

30. Zurich denies the allegations contained in Paragraph 30 of the Complaint.

31. Zurich denies the allegations contained in Paragraph 31 of the Complaint.

32. Zurich denies the allegations contained in Paragraph 32 of the Complaint.

33. Zurich denies the allegations contained in Paragraph 33 of the Complaint.

34. Zurich denies the allegations contained in Paragraph 34 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Plaintiff has misnamed Zurich in this Complaint. The Defendant's proper name is "Zurich American Insurance Company."

SECOND AFFIRMATIVE DEFENSE

Count VI of the Plaintiffs' Complaint should be dismissed under Rule 12(b)(6) because it fails to state a claim against Zurich upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

The Plaintiffs are barred from asserting claims pursuant to M.G.L. Chapter 93A because the alleged written demand for relief fails to satisfy the requirements of M.G.L. Chapter 93A, Section 9.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiffs are barred from asserting claims pursuant to M.G.L. Chapter 93A because the alleged written demand fails to make reference to Chapter 93A, as required by Section 9 of M.G.L. Chapter 93A.

FIFTH AFFIRMATIVE DEFENSE

The Plaintiffs are barred from asserting claims pursuant to M.G.L. Chapter 93A because the alleged written demand fails to make reference to the Consumer Protection Act, as required by Section 9 of M.G.L. Chapter 93A.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiffs are barred from asserting claims pursuant to M.G.L. Chapter 93A because the alleged written demand failed to identify *what consumer rights* Zurich violated, as required by Section 9 of M.G.L. Chapter 93A.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiffs are barred from asserting claims pursuant to M.G.L. Chapter 93A because the alleged written demand failed to assert that Zurich acted in an unfair and deceptive manner, as required by Section 9 of M.G.L. Chapter 93A.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiffs are barred from asserting claims pursuant to M.G.L. Chapter 93A because the alleged written demand failed to assert that the Plaintiffs expect/demand a settlement offer within thirty (30), as required by Section 9 of M.G.L. Chapter 93A.

NINTH AFFIRMATIVE DEFENSE

The Plaintiffs are barred from asserting claims pursuant to M.G.L. Chapter 93A because the alleged written demand failed to assert that the Plaintiffs would seek multiple damages and legal expenses should relief be denied, as required under Section 9 of M.G.L. Chapter 93A.

TENTH AFFIRMATIVE DEFENSE

Count VI of the Plaintiffs' Complaint should be dismissed because, even if Zurich did not respond to the Plaintiffs' June 21, 2004 letters, the Plaintiffs' suffered no injury or damage as a result.

ELEVENTH AFFIRMATIVE DEFENSE

Zurich did not violate M.G.L. c. 176D or any other Massachusetts statute or law in allegedly failing to make an offer of settlement because liability in this case is not reasonably clear.

TWELFTH AFFIRMATIVE DEFENSE

Zurich did not violate M.G.L. c. 176D or any other Massachusetts statute or law in allegedly failing to make an offer of settlement because the damages in this case were not reasonably clear.

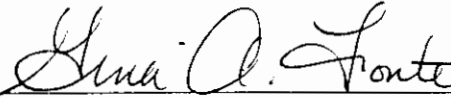
THIRTEENTH AFFIRMATIVE DEFENSE

Zurich reserves the right to supplement the foregoing Affirmative Defenses to the extent allowed by law and to the extent that additional defenses are revealed during discovery.

WHEREFORE, Zurich requests that this Court:

- (a) dismiss Count VI of the Plaintiffs' Complaint against Zurich; and
- (b) grant such other and further relief as this Court deems appropriate.

ZURICH AMERICAN INSURANCE COMPANY,
By its Attorneys,



Peter G. Hermes, BBO. No. 231840
Gina A. Fonte, BBO No. 642367
HERMES, NETBURN, O'CONNOR &
SPEARING, P.C.
111 Devonshire Street, 8th Floor
Boston, MA 02110
(617) 728-0050
(617) 728-0052 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May, 2005, I served the above notice on the Plaintiffs in the above-entitled action by mailing a copy thereof, postage prepaid, to counsel of record:

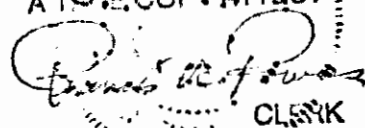
Garrett Bradley, Esquire
THORNTON & NAUMES, LLP
1000 Summer Street, 30th Floor
Boston, MA 02110

Anthony Campo, Esq.
Boyle, Morrissey & Campo
25 Stuart Street
Boston, MA 02116



Gina A. Fonte

G:\DOCS\PGH\clients\zurich\Heaven\Pleadings\Answer.doc

ATTEST

CLERK

RECEIVED

MAY 31 2005

PLYMOUTH SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS.

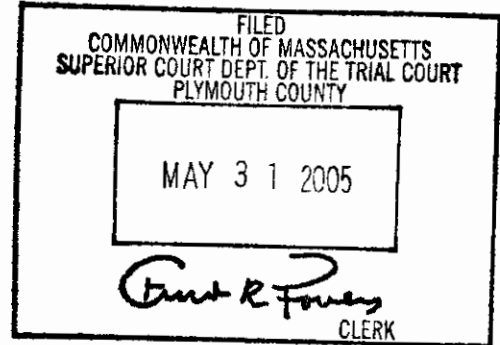
SUPERIOR COURT

C.A. NO.: PLCV2005-00287-B

JULIA HEAVERN, BY HER PARENTS AND)
 NEXT FRIENDS, DENISE AND PAUL HEAVERN,)
 NICOLE HEAVERN, BY HER PARENTS AND)
 NEXT FRIENDS, DENISE AND PAUL HEAVERN,)
 KERIN MITCHELL, BY HER PARENTS AND)
 NEXT FRIENDS, ELLEN AND JIM MITCHELL,)
 TAYLOR VIEIRA, BY HER PARENTS AND)
 NEXT FRIENDS, KATHY AND STEVE VIEIRA,)
 AND BRIAN VIEIRA, BY HIS PARENTS AND)
 NEXT FRIENDS, KATHY AND STEVE VIEIRA)
 Plaintiffs)

v.)

MARRIOTT INTERNATIONAL, INC. AND)
 ZURICH NORTH AMERICA)
 Defendants)



**ANSWER AND JURY CLAIM OF THE DEFENDANT, MARRIOTT INTERNATIONAL,
 INC., TO THE PLAINTIFFS' COMPLAINT**

FIRST DEFENSE

The Defendant, Marriott International, Inc., answers the separately numbered paragraphs of the Complaint as follows:

PARTIES

1. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

2. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

3. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

4. The defendant is without knowledge or information

sufficient to form a belief as to the truth of the allegations contained in this paragraph.

5. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

6. The defendant denies the allegations contained in this paragraph.

7. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

JURISDICTION

7. The defendant denies the allegations contained in this paragraph.

FACTS

8. The defendant denies the allegations contained in this paragraph.

9. The defendant denies the allegations contained in this paragraph.

10. The defendant denies the allegations contained in this paragraph.

11. The defendant denies the allegations contained in this paragraph.

12. The defendant denies the allegations contained in this paragraph.

13. The defendant denies the allegations contained in this paragraph.

14. The defendant denies the allegations contained in this

paragraph.

15. The defendant denies the allegations contained in this paragraph.

16. The defendant denies the allegations contained in this paragraph.

**COUNT I
JULIA HEAVERN, PPA DENISE AND PAUL HEAVERN V. COURTYARD MARRIOTT
NEGLIGENCE**

17. The defendant denies the allegations contained in this paragraph.

18. The defendant denies the allegations contained in this paragraph.

**COUNT III
NICOLE HEAVERN PPA DENISE AND PAUL HEAVERN V. COURTYARD MARRIOTT
NEGLIGENCE**

19. The defendant denies the allegations contained in this paragraph.

20. The defendant denies the allegations contained in this paragraph.

**COUNT III
KERIN MITCHELL PPA ELLEN AND JIM MITCHELL V. COURTYARD MARRIOTT
NEGLIGENCE**

21. The defendant denies the allegations contained in this paragraph.

22. The defendant denies the allegations contained in this paragraph.

**COUNT IV
TAYLOR VIEIRA, PPA KATHY STEVE VIEIRA V. COURTYARD MARRIOTT
NEGLIGENCE**

23. The defendant denies the allegations contained in this paragraph.

24. The defendant denies the allegations contained in this paragraph.

COUNT V
BRYAN VIEIRA, PPA KATHY AND STEVE VIEIRA V. COURTYARD MARRIOTT
NEGLIGENCE

25. The defendant denies the allegations contained in this paragraph.

26. The defendant denies the allegations contained in this paragraph.

COUNT VI
JULIA HEAVERN, ET AL V. ZURICH NORTH AMERICA
VIOLATION OF M.G.L. c. 93A and M.G.L CHAPTER 176D, SECTION
3 (9) (f)

27. The defendant, Marriott International, Inc., makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Marriott International, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

28. The defendant, Marriott International, Inc., makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Marriott International, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

29. The defendant, Marriott International, Inc., makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Marriott International, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

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answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Marriott International, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

31. The defendant, Marriott International, Inc., makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Marriott International, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

32. The defendant, Marriott International, Inc., makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Marriott International, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

33. The defendant, Marriott International, Inc., makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Marriott International, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

34. The defendant, Marriott International, Inc., makes no answer to the allegations contained in this paragraph as they do not purport to state a claim against the defendant, Marriott International, Inc. To the extent that they do state a claim against the defendant, they are hereby expressly denied.

SECOND DEFENSE

This action is barred by operation of the applicable statute of limitations.

THIRD DEFENSE

If the plaintiffs are entitled to recover against the defendant, any such recovery must be reduced in accordance with the comparative negligence statute, G.L. c. 231, sec. 85, since the negligence of the plaintiffs was the proximate cause of the injuries allegedly sustained.

FOURTH DEFENSE

The plaintiffs were more than 50% at fault in causing the alleged injuries and, therefore, are barred from recovery by the comparative negligence statute, G.L. c. 231, sec. 85.

FIFTH DEFENSE

The Complaint should be dismissed pursuant to Mass. R. Civ. P. 12(b)(4) for insufficiency of process.

SIXTH DEFENSE

The Complaint should be dismissed pursuant to Mass. R. Civ. P. 12(b)(5) for insufficiency of service of process.

SEVENTH DEFENSE

The Complaint fails to state a claim against the defendant upon which relief can be granted and, therefore, the Complaint should be dismissed pursuant to Mass. R. Civ. P. 12(b)(6).

EIGHTH DEFENSE

The plaintiffs have failed to mitigate, minimize or avoid damages, if any, alleged in the plaintiffs' Complaint; accordingly, any recovery must be reduced by the amount of damage

resulting from such failure.

NINTH DEFENSE

The acts or omissions which are alleged to have caused the damages and/or injuries referred to in the Complaint were committed by a third party who was not an agent or employee of the defendant and for whose acts or omissions the defendant is not legally responsible.

TENTH DEFENSE

The Complaint should be dismissed pursuant to Mass. R. Civ. P. 12(b)(6) on the grounds that the plaintiffs' conduct is insufficient as a matter of law.

ELEVENTH DEFENSE

This action is barred by the statute of repose, G.L. c. 260, sec. 2B.

TWELFTH DEFENSE

The Complaint should be dismissed pursuant to Mass. R. Civ. P. 12(b)(6) on the grounds that the cause of action as alleged is pre-empted.

THIRTEENTH DEFENSE

The Complaint should be dismissed pursuant to Mass. R. Civ. P. 12(b)(2) on the grounds that there is no personal jurisdiction over the defendant.

FOURTEENTH DEFENSE

The Complaint should be dismissed pursuant to Mass. R. Civ. P. 12(b)(3) on the grounds that the venue is improper.

FIFTEENTH DEFENSE

The Complaint should be dismissed based on the doctrine of

forum non conveniens.

SIXTEENTH DEFENSE

To the extent New Hampshire Law may apply, the Plaintiffs were comparatively at fault under the provisions of N.H. RSA 507:7-d.

SEVENTEENTH DEFENSE

To the extent New Hampshire Law may apply, Defendant asserts the defense of superseding, intervening cause.

EIGHTEENTH DEFENSE

To the extent New Hampshire Law may apply, Defendant asserts the defense of assumption of risk.

NINETEENTH DEFENSE

To the extent New Hampshire Law may apply, Defendant disputes the nature, extent and affects of the alleged damages the Plaintiffs' claim to have suffered as a result of the Defendants' alleged actions.

TWENTIETH DEFENSE

To the extent New Hampshire Law may apply, Defendant denies that it or anyone for whose conduct it was responsible was negligent.

TWENTY-FIRST DEFENSE

To the extent New Hampshire Law may apply, Defendant denies that it is vicariously liable for the plaintiffs' alleged injuries.

TWENTY-SECOND DEFENSE

To the extent New Hampshire Law may apply, the Plaintiffs caused or contributed to cause their alleged damages.

TWENTY-THIRD DEFENSE

To the extent New Hampshire Law may apply, the Plaintiffs' claims are barred or limited by the applicable New Hampshire regulations, statutes or local laws.

TWENTY-FOURTH DEFENSE

To the extent New Hampshire Law may apply, the Plaintiffs' claims are barred the applicable statute of limitations (N.H. RSA § 508:4).

TWENTY-FIFTH DEFENSE


To the extent New Hampshire Law may apply, the Plaintiffs' claims are barred the applicable statute of repose.

WHEREFORE, the Defendant demands that this action be dismissed and that judgment enter in the Defendant's favor together with costs.

THE DEFENDANT DEMANDS A TRIAL BY JURY.

THE DEFENDANT,
MARRIOTT INTERNATIONAL, INC.,
BY ITS ATTORNEYS,

Date: 5/27/05



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CERTIFICATE OF SERVICE

Pursuant to Mass. R. Civ. P. 5(a) and/or Sup. Ct. R. 9A, I, Keith L. Sachs, do hereby certify that a copy of the foregoing documents have been served first-class postage prepaid on all parties or their representatives in this action as listed below:

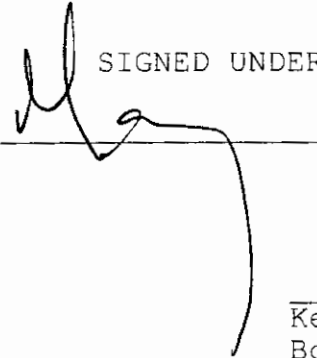
COUNSEL FOR THE PLAINTIFF

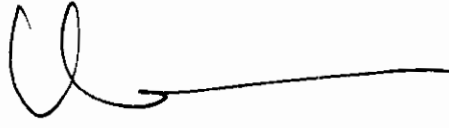
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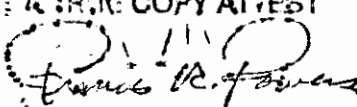
COUNSEL FOR ZURICH NORTH AMERICA

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SIGNED UNDER THE PENALTIES OF PERJURY THIS 27th DAY OF

 , 2005


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4 TRUE COPY ATTEST

CLERK